

EXHIBIT 1

to Plaintiff's Motion for Leave to File Supplemental Brief in Further Opposition to
Defendant's Motion to Dismiss

Plaintiff's Proposed Supplemental Brief in Further Opposition to Defendant's Motion to Dismiss

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17 Attorneys for Plaintiff HP Tuners, LLC

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19 **UNITED STATES DISTRICT COURT**
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21 **DISTRICT OF NEVADA**

22 HP TUNERS, LLC, a Nevada limited liability
23 company,

24 Plaintiff,

25 vs.

26 KENNETH CANNATA,

27 Defendant.

28 Case No. 3:18-cv-00527-LRH-WGC

**SUPPLEMENTAL BRIEF IN FURTHER
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

29 Plaintiff HP Tuners, LLC ("Plaintiff"), by and through its counsel, hereby submits this
30 supplemental brief in further opposition to Defendant's Motion to Dismiss (Dkt. 10), and states as
31 follows:

32 On January 7, 2019, Plaintiff filed its Opposition to Defendant's Motion to Dismiss
33 Pursuant to Fed. R. Civ. P. 12(b)(6) [Dkt. 14]. On May 16, 2019, in connection with discovery in
34 another pending action, the continued deposition of Kevin Sykes-Bonnett ("Sykes-Bonnett") was
35 completed. During the deposition, Sykes-Bonnett provided explicit testimony regarding secret

1 email accounts which were used by Sykes-Bonnett and Defendant Cannata to communicate
 2 between April 8, 2016 (during the negotiation of Cannata's buyout) and January 8, 2017
 3 (subsequent to the October 20, 2016 buyout transaction), and which Defendant Cannata used to
 4 improperly and unlawfully share highly confidential and proprietary information of HPT. (An
 5 excerpt of Sykes-Bonnett's deposition testimony relating to these issues is incorporated by this
 6 reference as Exhibit A and has been filed in connection with Plaintiff's Motion for Leave to Seal
 7 Exhibit A to Plaintiff's Supplemental Brief in further Opposition to Defendant's Motion to
 8 Dismiss, which has been filed concurrently of record in this cause). The email communications
 9 unequivocally establish that Cannata provided highly confidential and proprietary information of
 10 HPT to Sykes-Bonnett **BOTH** when he was an owner of HPT and after the consummation of his
 11 nearly \$7M buyout transaction. The use of this secret email address was wholly concealed and
 12 never disclosed to HPT at any time.

13 In particular, Cannata created an email account with the email address
 14 "somethingnew1892@yahoo.com", which he used to send emails to Sykes-Bonnett who had
 15 created the email address "fhptuners@yahoo.com" for purposes of having these private
 16 communications with Cannata. (Ex. A). In April and May 2016 (during the negotiations relating
 17 to the buyout when Defendant was an owner of HPT), he used the
 18 "somethingnew1892@yahoo.com" secret email address to share source code and program files
 19 with Sykes-Bonnett. On October 16, 2016, a mere four days before the consummation of the
 20 nearly \$7M buyout, Defendant shared additional source code files and program files with Sykes-
 21 Bonnett using his secret email account. Subsequent to the consummation of the transaction, on
 22 January 9, 2017, Cannata shared additional confidential and proprietary information of HPT with
 23 Sykes-Bonnett, including proprietary information relating to HPT's application key as well as a
 24 highly confidential document relating to HPT's interface programming. Here, Defendant Cannata
 25 and Sykes-Bonnett's purpose and intent of using the secret email addresses was to avoid discovery
 26 and for Defendant Cannata to unlawfully and improperly share and disclose HPT's confidential
 27 and proprietary information to Sykes-Bonnett without 'getting caught.' The fact that Defendant
 28 Cannata unequivocally shared HPT's confidential and proprietary information of HPT with Sykes-

1 Bonnett **both** before and after the buyout transaction is highly relevant to Defendant's motion to
2 dismiss and should be considered in connection with Defendant's motion to dismiss.¹

3 As detailed in Plaintiff's opposition to motion to dismiss and for the additional reasons set
4 forth herein, Defendant's motion to dismiss must be denied.

5 WHEREFORE, Plaintiff, HP TUNERS, LLC, respectfully prays for an order DENYING
6 Defendant's Motion to Dismiss and for such other relief as this Court deems necessary and
7 appropriate.

8 DATED this 19th day of June, 2019.

9 LEE HIGH, LTD.

10 /s/ Elizabeth High, Esq.
11 CECILIA LEE, ESQ.
12 ELIZABETH HIGH, ESQ.

13 MARKS & KLEIN

14 /s/ Andrew P. Bleiman, Esq.
15 ANDREW P. BLEIMAN, ESQ.

16 Attorneys for Plaintiff HP Tuners, LLC

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22 ¹ It should be noted that Defendant's deception, dishonesty and bad faith misconduct in this
23 regard continues to this day. In connection with ongoing discovery in this action, Plaintiff served
24 the following interrogatory upon Defendant: "State all email addresses You have used to send
25 email communications to Kevin Sykes-Bonnett at any time since January 1, 2016." Defendant
26 provided the following answer to this interrogatory: "Without waiving any objection, Cannata
27 responds as follows: To the best of Cannata's knowledge and recollection, the email addresses
28 Cannata used to communication [sic] with Kevin Sykes-Bonnett after January 1, 2016 include
ken_cannata@att.net, ken_cannata@charter.net and, possibly, ken@hptuners.com." Consequently, Defendant failed to provide the somethingnew1892@yahoo.com email address in response to this interrogatory, and Defendant's answer is materially false, improper and sanctionable.

INDEX OF EXHIBITS

Exhibit	Description	Number of Pages
A	Excerpt of Sykes-Bonnett's Deposition	<i>FILED UNDER SEALED</i>

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1 CERTIFICATE OF SERVICE

2 Pursuant to FRCP 5(b), I certify under penalty of perjury that I am an employee of LEE
3 HIGH, LTD., 448 Ridge Street, Reno, Nevada 89501, and that on June 19, 2019, I served copies of
4 the SUPPLEMENTAL BRIEF IN FURTHER OPPOSITION TO DEFENDANT'S MOTION TO
5 DISMISS via the Court's Notice of Electronic Filing to all those persons listed on the United States
6 District Court CM/ECF Confirmation Sheet.

7 DATED this 19th day of June, 2019.

8 /s/ Elizabeth Dendary, CP
9 ELIZABETH DENDARY, CP
Certified Paralegal

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EXHIBIT A

to Supplemental Brief in Further Opposition to Defendant's Motion to Dismiss

Excerpt of Sykes-Bonnett's Deposition

FILED UNDER SEAL